

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CHAD MCCUNE, ET AL.,

Plaintiffs,

Versus

GRACO CHILDREN'S PRODUCTS,
ET AL.,

Defendants.

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* Case No.
* 5:2009cv00107
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DEPOSITION OF JENNIFER RAY CUMMINGS
NOVEMBER 4, 2010

TAKEN BEFORE Teresa L. Hollingsworth,
Certified Court Reporter, Certificate No. 537,
Bushman Court Reporting, 620 West Third Street,
Suite 101, Little Rock, Arkansas, on November 4,
2010, at the Arkansas Bar Center, 2224 Cottondale
Lane, Little Rock, Arkansas commencing at
8:36 a.m.

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1 MR. FIELDS: Ben Fields on behalf
2 of Jason McCune and his family.
3 JENNIFER RAY CUMMINGS
4 The witness hereinbefore named, having
5 first been duly cautioned and sworn or affirmed to
6 tell the truth, the whole truth, and nothing but
7 the truth testified as follows:
8 EXAMINATION
9 BY MS. OERTLE:
10 Q. Good morning.
11 A. Good morning.
12 Q. Will you tell us your full name, please?
13 A. Jennifer Ray Cummings.
14 Q. Ms. Cummings, where do you live?
15 A. 3000 Gemstone Cove, Sherwood, Arkansas,
16 72120.
17 Q. How old of a lady are you?
18 A. 28.
19 Q. What is your birth date?
20 A. September 10th, 1982.
21 Q. Do you understand that we are here today
22 about an accident that happened back in July of
23 2007 on I-65?
24 A. Yes.
25 Q. Did you witness that accident?

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1 A. Yes, I did.
2 Q. Was -- who was with you that day in your
3 car?
4 A. Just me and my husband.
5 Q. What is your husband's name?
6 A. William Paul Cummings.
7 Q. Where were you and your husband headed to
8 that day?
9 A. We were heading home from Branson.
10 Q. And did you live at the same address back in
11 2007?
12 A. Yes.
13 Q. So, were you headed north on I-65?
14 A. I don't know. We were coming out of
15 Damascus going to Conway. I do not know
16 directions. I'm sorry.
17 Q. So, you would have been going south, I think
18 then? Okay.
19 A. I don't know.
20 Q. Who was driving, you or your husband?
21 A. My husband was driving.
22 Q. What kind of vehicle did you have?
23 A. A 2000 Ford Focus.
24 Q. Can you -- well, that was a Sunday, right?
25 A. Yes, it was.

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1 Q. Do you remember what the weather was like
2 that day?
3 A. It was bright and sunny and not a cloud in
4 the sky.
5 Q. What was the traffic like on 65 that day?
6 A. Closer to Branson it was a little trafficky,
7 but there was nobody. There was just the three of
8 us on the road that day.
9 Q. Do you mean closer to the time of the
10 accident?
11 A. Right.
12 Q. About how long had you been driving since
13 you left Branson before you got to the Damascus
14 area?
15 A. About two and a half hours. I am not
16 really --
17 Q. An estimate is fine. And you say the three
18 of us on the road. Who were you referring to?
19 A. It was just our vehicle, the black Sport
20 Trac Ford and the tractor. The only people on the
21 road at the time of the accident.
22 Q. Were you all headed in the same direction?
23 A. Yes, we were.
24 Q. When you say the Ford Sport Trac, is that
25 the vehicle involved in the accident?

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1 A. That is the vehicle that hit the tractor.
2 Q. Why don't you just describe for us what you
3 observed when you saw the accident?
4 A. Well, we were coming right out of Damascus,
5 and I don't know if you are familiar with 65, but
6 it is four-lane road with a wide median and you
7 could see a good mile. I mean, very visible. And
8 I just -- I said to myself, she is going to get
9 over. And then I said it out loud. I was like,
10 she is going to get over, right. And she never
11 hit her brakes or anything and the car just -- the
12 black Sport Trac just ran right into the tractor.
13 And it was like witnessing one of those car test
14 dummies running into the wall. And I said a
15 prayer for the tractor man because I thought he
16 was dead. I mean, I thought -- I was like, there
17 is no way he could survive this.
18 Q. Let's back up just a little bit. So, you
19 mentioned that it was a four-lane road at that
20 point?
21 A. Yes, it was.
22 Q. Do you remember which lane that you and your
23 husband were traveling in?
24 A. We were in the right-hand lane. So was the
25 Sports Trac and the tractor was over as far as he

3 (Pages 6 to 9)

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1 could because there was a bridge that kind of
 2 narrowed it down, but it was still a very wide
 3 bridge.
 4 Q. And the tractor, was he in the traveling
 5 lane or was he in the shoulder?
 6 A. He was kind of half -- it is not much of a
 7 shoulder, but he was over as far as he could be.
 8 He was in the right-hand lane as well.
 9 Q. Had he gotten -- the tractor, had he gotten
 10 to the bridge yet?
 11 A. The tractor was right there getting on the
 12 bridge.
 13 Q. Do you know approximately how fast your car
 14 was going?
 15 A. My husband normally goes the speed limit,
 16 but I wasn't driving. So, I would say about
 17 probably 50 or 55 because we were just coming out
 18 of Damascus and it is like 35 in there.
 19 Q. The Ford Sport Trac was in front of you?
 20 A. Yes.
 21 Q. In your same lane, in the right-hand lane?
 22 A. Correct.
 23 Q. And you said you were asking, she is going
 24 to get over, she is going to get over, can you
 25 explain to us what you meant by that?

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1 A. Because I could see that the tractor was
 2 going very slow, I mean, 10 or 15 miles an hour
 3 and she was going extremely fast because she
 4 passed us going through Damascus.
 5 VIDEOGRAPHER: I hate to interrupt,
 6 but Ms. Oertle your microphone is
 7 rubbing on something and it is --
 8 MS. OERTLE: Tell me if that is
 9 better.
 10 BY MS. OERTLE:
 11 Q. Do you have an estimate of how fast the Ford
 12 Sport Trac was going?
 13 MR. FIELDS: Objection, form.
 14 THE WITNESS: I don't know, but I
 15 was just thinking really fast because
 16 the way, the impact, you know they
 17 normally do those test crash dummies
 18 like at 55 and I mean, it looked faster
 19 than that hitting, you know, a wall.
 20 So, if the tractor was going 15 plus 55,
 21 I mean.
 22 BY MS. OERTLE:
 23 Q. Did you see the brake lights go on on the
 24 Ford Sport Trac?
 25 A. Not until like as impact hit. No brake

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1 lights, nothing at all. It was just like -- I
 2 don't know why she didn't get over. I mean, it
 3 was well avoidable, because even if she had to she
 4 could have got all of the way over because there
 5 was no traffic coming towards us at all.
 6 Q. Were there any vehicles in between the Sport
 7 Trac and the tractor?
 8 A. No. There was no other vehicle on the road.
 9 Just the three of us at the time of the accident.
 10 Q. How long before the accident had the Ford
 11 Sport Trac passed you?
 12 A. A minute, maybe. She had passed us
 13 throughout the day. I guess she had stopped
 14 several times, because she had been driving, I
 15 mean just really quickly. I remember one time
 16 that it was just a double yellow line and there
 17 was a single road and she went over the double
 18 yellow line and passed us.
 19 Q. How far back in terms of either miles or
 20 time was the first time that you think that the
 21 Ford Sport Trac passed you and your husband?
 22 A. Probably about an hour or so.
 23 Q. And you say she passed you a couple of
 24 times?
 25 A. Yes.

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1 Q. Can you estimate about how many times total
 2 she passed you?
 3 A. About two, I am thinking.
 4 Q. One of the times she passed you by going
 5 over, was it in a no passing zone?
 6 MR. FIELDS: Objection, leading.
 7 THE WITNESS: Yes.
 8 BY MS. OERTLE?
 9 Q. Was that what your testimony is?
 10 A. Yes.
 11 Q. What about the other times she passed you?
 12 What was the road there?
 13 A. It was two lanes. It was right there in
 14 Damascus.
 15 Q. Was that in a passing zone or a no passing
 16 zone?
 17 A. It's a passing -- I'm sorry. It should be
 18 four -- it was two lanes going either way. So, it
 19 was a passing zone.
 20 Q. What did you do after you saw the accident?
 21 A. I called 9-1-1. My husband pulled around to
 22 go help the man on the tractor.
 23 Q. Where did your husband park your car?
 24 A. We went around the accident and pulled in
 25 front of the bridge, in front of the accident.

4 (Pages 10 to 13)